

# In the United States Court of Federal Claims

NOT FOR PUBLICATION

No. 07-142T

(Filed May 29, 2007)

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DIAHANN D. CAMBRIDGE, PRO SE.,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

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*Diahann D. Cambridge*, pro se, Flossmoor, Illinois.

*Robert Stoddart*, Department of Justice, Washington, D.C., with whom was *Assistant Attorney General Eileen J. O'Connor*, for Defendant. *David Gustafson*, Chief, Court of Federal Claims Section, and *G. Robson Stewart*, Reviewer, Court of Federal Claims Section.

## OPINION & ORDER

*Futey, Judge.*

This *pro se* case comes before the court on defendant United States' Motion To Dismiss under RCFC 12(b)(6). Plaintiff filed an Application for Reward for Original Information with the Internal Revenue Service ("IRS") in 1991 and subsequently received two disbursements from the IRS. Plaintiff now claims that the IRS denied the balance due on her "Original Reward Claim." Plaintiff seeks an unspecified balance under IRS Publication 733 § 1 (Amount and Payment of Reward). Defendant argues that plaintiff fails to articulate a claim upon which relief can be granted and requests dismissal with prejudice.

### **Factual Background**

In September 1989 plaintiff contacted IRS Special Agent Darryl Epps attempting to act as an “informant” regarding a violation of tax laws allegedly committed by David E. Pierce as the owner of Harold’s Chicken Shacks. Plaintiff avers that she presented total and complete information regarding the alleged violation to the IRS. On January 23, 1991, plaintiff, under the name Diana D. Pierce, filed Form 211, Application for Reward for Original Information.<sup>1</sup> The IRS responded with an undated standard form letter, which stated that the IRS awarded her \$1,131.40. The letter also indicated that plaintiff would receive said payment in the near future and that there was a possibility of an additional reward subject to further notification. In February 1998 the IRS responded with another standard form letter, the exact date of which is illegible. The letter stated that plaintiff’s total reward was \$3,429.14.<sup>2</sup> The letter again indicated that the IRS would send a check in that amount and that an additional reward may be forthcoming. Plaintiff received a final letter, dated January 8, 2007, from the IRS stating that, after careful review, her claim was finalized and that she would not receive any further payments on her claim for reward.

Plaintiff maintains that the IRS denied the balance due on her Original Reward Claim No. 36-9871, the amount of which should be calculated according to I.R.S. Publication 733 (Rev. 1-89). Plaintiff filed suit in this court on March 5, 2007, along with a supporting affidavit and a request to proceed *in forma pauperis*.<sup>3</sup> Defendant moved to dismiss the case with prejudice for failure to state a claim upon which relief can be granted. Plaintiff filed a response in opposition to defendant’s motion for dismissal on May 10, 2007.

### **Discussion**

The court will grant a RCFC 12(b)(6) motion only if it appears beyond a doubt that plaintiffs have failed to allege facts sufficient to support their claim.

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<sup>1</sup> IRS Form 211 is a standard application which allows individuals to claim a reward after providing information about under payments of tax to the United States government. Plaintiff filed Form 211 to claim her reward after reporting an alleged violation of tax laws by her former husband Mr. David E. Pierce.

<sup>2</sup> Neither plaintiff nor defendant indicated when plaintiff received the reward payments.

<sup>3</sup> This court issued an Order allowing plaintiff to proceed *in forma pauperis* on March 8, 2007.

*Conley v. Gibson*, 355 U.S. 41, 45-56 (1957); *Mostow v. United States*, 966 F.2d 668, 672 (Fed. Cir. 1992). In ruling on a RCFC 12(b)(6) motion to dismiss, the court must accept as true the complaint's undisputed factual allegations and should construe them in a light most favorable to plaintiff. *Papasan v. Allain*, 478 U.S. 265, 283 (1986) (citing *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974); *Gould, Inc. v. United States*, 935 F.2d 1271, 1274 (Fed. Cir. 1991)). Nevertheless, "conclusory allegations unsupported by any factual assertions will not withstand a motion to dismiss." *Briscoe v. LaHue*, 663 F.2d 713, 723 (7th Cir. 1981), *aff'd*, 460 U.S. 325 (1983). "[L]egal conclusions, deductions, or opinions couched as factual allegations are not given a presumption of truthfulness." *Blaze Constr., Inc. v. United States*, 27 Fed. Cl. 646, 650 (1993) (internal quotations omitted).

Defendant asserts that plaintiff is not entitled to any additional payment because the IRS agreed neither to pay any specific amount nor calculate plaintiff's reward under the mandatory language of Publication 733. The IRS has broad discretion to decide whether to make a reward and the amount of that reward. *Saracena v. United States*, 508 F.2d 1333, 1336 (1975); *Diamond v. United States*, 566 F.2d 1188 (1977). Under 26 U.S.C. § 7623, the Secretary of Treasury "is authorized to pay such sums as he deems necessary for detecting under payments of tax or detecting and bringing to trial and punishment persons guilty of violating the internal revenue laws." Furthermore, 26 C.F.R. § 301.7623-1 provides that a district or service center director may approve a reward in a suitable amount in cases where rewards are not otherwise provided by law. A district director may determine whether a reward will be paid and its amount using specific guidelines. *See* I.R.S. Publication 733 (Rev. 1-89) ("The District Director will determine whether a reward will be paid and its amount. In making this decision, the information you provided will be evaluated in relation to the facts developed by the resulting investigation. Claims for reward will be paid in proportion to the value of the information you furnished voluntarily and on your own initiative with respect to taxes, fines, and penalties (but not interest) we collect.") Federal courts have held the aforesaid statute and regulations to be discretionary and not money-mandating. *Krug v. United States*, 168 F.3d 1307, 1310 (Fed. Cir. 1999); *Carelli v. Internal Revenue Service*, 668 F.2d 902, 904 (6<sup>th</sup> Cir. 1982); *Destefano v. United States*, 52 Fed. Cl. 291, 293 (2002).

The Federal Circuit has held that 26 U.S.C. § 7623, 26 C.F.R. § 301.7623-1, and Publication 733 allow recovery on a contract theory only. *Merrick v. United States*, 846 F.2d 725, 726 (Fed. Cir. 1988). To qualify for this exception, the complaint must allege that the parties reached an agreement as to payment of a reward and its specific amount. *Id.* Plaintiff cannot contractually bind the United States merely by invoking the aforesaid statute and regulations. *Krug*, 168 F.3d at 1308; *Destefano*, 52 Fed. Cl. at 293 (citing *Merrick*, 846 F.2d at 726).

Here, defendant became contractually obligated when it agreed that plaintiff was eligible to receive payment with regard to a successful prosecution of tax law violations, but this obligation was limited to the two reward amounts it calculated and about which defendant notified plaintiff. Plaintiff neither disputes the receipt of the two reward amounts nor identifies the balance of the amount allegedly due on her original reward claim. Plaintiff argues that the IRS owes her an additional reward because the IRS collected several amounts from Mr. David E. Pierce based on information she provided. Plaintiff also attached two letters from the IRS dated July 19, 2005, and June 14, 2006, informing her that it could not give her a time frame or any remaining reward amount until the investigation was completed. Unfortunately, this information is not helpful because plaintiff again does not specify any agreement with the IRS or any balance owed. Moreover, the aforesaid letters predate the IRS final action on plaintiff's claim for reward on January 8, 2007, and do not support any of her assertions. To state a valid claim, plaintiff must assert either a sum certain promised by defendant, a money-mandating statute or regulation, or a promise by defendant to calculate a reward amount by a certain method. *Stack v. United States*, 25 Cl. Ct. 634, 637 (1992). In the absence of such allegation there can be no recovery. To rule otherwise would involve this court in speculation regarding the amount of the parties' agreement and the propriety of reward determination decisions by the IRS.

### **Conclusion**

\_\_\_\_\_ For the above-stated reasons, Defendant's Motion To Dismiss is ALLOWED. The Clerk of the Court is directed to dismiss Plaintiff's complaint. No costs.

IT IS SO ORDERED.

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**BOHDAN A. FUTEY**  
**Judge**